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HOUSE OF REPRESENTATIVES

REPORT
101-351

FILIPINO WORLD WAR II VETERANS NATURALIZATION ACT OF 1989

NOVEMBER 13, 1989.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. MORRISON of Connecticut, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 525]

The Committee on the Judiciary, to whom was referred the bill (H.R. 525) to permit the naturalization of certain Filipino war veterans, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Filipino World War II Veterans Naturalization Act of 1989".

SEC. 2. NATURALIZATION OF NATIVES OF THE PHILIPPINES THROUGH ACTIVE-DUTY SERVICE IN THE ARMED FORCES DURING WORLD WAR II.

(a) WAIVER OF CERTAIN REQUIREMENTS.—Clauses (1) and (2) of section 329(a) of the Immigration and Nationality Act (8 U.S.C. 1440(a)) shall not apply to the naturalization of any person—

(1) who was born in the Philippines and who was otherwise a noncitizen national of the United States residing in the Philippines before the service described in paragraph (2);

(2) who served honorably in an active-duty status in the military, air, or naval forces of the United States, including the Philippine Army, the Philippine Scouts, and recognized guerrilla units, at any time during the period beginning September 1, 1939, and ending December 1, 1946;

(3) who is otherwise eligible for naturalization under section 329 of such Act; and

(4) who applies for naturalization during the 2-year period beginning on the date of the enactment of this Act.

(b) WAIVER OF RESIDENCY REQUIREMENTS.—Section 340(d) of the Immigration and Nationality Act (8 U.S.C. 1451(d)) shall not apply to a person who is naturalized pursuant to subsection (a).

Amend the title so as to read:

H523-26

A bill to provide for the naturalization of natives of the Philippines through active-duty service in the Armed Forces of the United States during World War II.

PURPOSE OF BILL

The purpose of H.R. 525, as amended, is to permit Filipino nationals who served in active-duty status in the U.S. Armed Forces during World War II to become naturalized citizens of the United States.

HISTORY OF LEGISLATION

H.R. 525 was introduced by Congressman Dymally on January 19, 1989. On September 21, 1989, the Subcommittee on Immigration, Refugees, and International Law held a hearing on the bill, at which the Administration indicated its support for the measure. During Subcommittee mark-up on November 1, 1989, Chairman Morrison offered an amendment in the nature of a substitute to the bill, which was adopted. The bill, as amended, was then favorably reported to the full Judiciary Committee by voice vote.

COMMITTEE VOTE

H.R. 525, as amended, was considered by the full Judiciary Committee on November 9, 1989, and was ordered favorably reported, as amended by the Subcommittee, by voice vote.

NEED FOR LEGISLATION

From the end of the Spanish American War in 1899 until Philippine independence after World War II, the Philippine Islands were possessions of the United States.[1] The United States never fully incorporated the Philippines into its polity during this period, however, and Filipinos, even though they owed allegiance to the United States as nationals, never were granted United States citizenship.[2] Although Filipinos (unlike residents of other American possessions) stood in no better a position than inhabitants of foreign countries for purposes of American citizenship, the United States did move toward granting Philippine independence. In 1934, Congress enacted the Tydings-McDuffie Act.[3] That statute, accepted by the Philippines legislature, established a 10-year transitional period to end in a full grant of independence in 1944.[4] The date of independence was delayed two years, however, due to the Japanese invasion and occupation of the islands in ~~World War~~ II.[5] During the war, tens of thousands Filipinos furthered the Allied cause as Philippine Scouts (a group within the U.S. Army), as armed guerrillas, and as members of other organized units.

Controversy over the naturalization of Filipino veterans of World War II concerns legislation enacted in the early 1940's. In 1942 Congress decided to "reestablish the policy [it had] set forth * * * during the first World War" by providing for "the naturalization of aliens honorably serving in the armed forces of the United

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[1] Treaty of Peace Between the United States and Spain, art. III, 30 Stat. 1755 (1899).
[2] *Matter of Hermosa*, 14 I&N 447(BIA 19873).
[3] Act of March 24, 1934, ch. 84, 30 Stat. 456.
[4] *Id.* at § 10, 48 Stat. 463.
[5] *Matter of Hermosa*, 14 I&N at 448.

States during the present war." [6] The legislative product of this effort, enacted as part of the Second War Powers Act, added provisions to the Nationality Act of 1940 [1940 Act] that waived residency, literacy, educational, and certain other naturalization requirements for eligible aliens.[7] Eligible aliens under these provisions, as amended in 1944,[8] included individuals who both (1) were permanent resident aliens or aliens who had entered the United States (including its possessions) before September 1943 and (2) had served honorably in the military or naval forces of the United States during World War II and had been "at the time of * * * enlistment or induction * * * resident[s] thereof * * *." [9] The Nationality Act of 1940 generally was superseded by the Immigration and Nationality Act of 1952, which is still the basic immigration and nationality statute.[10] A 1961 amendment to the Immigration and Nationality Act requires that any naturalization petition filed after the amendment's enactment (September 26, 1961) "shall be heard and determined" in accordance with the standards of the Immigration and Nationality Act.[11] The Immigration and Nationality Act, in turn, does not contain the liberalized naturalization provisions that were added to the 1940 Act, and the liberalized provisions that it does contain do not extend benefits to alien veterans of World War II who enlisted or were inducted in the Philippines.[12]

After the liberalized benefits for servicemen were added to the Nationality Act of 1940 in 1942, question arose as to whether those benefits would be available to Filipinos who never had lived in the United States.[13] As has been discussed, the Philippines were at the time of this controversy under the dominion of the United States but scheduled to become independent under the Tydings-McDuffie Act. After internal disagreement over whether this prospective independence excluded the Philippines from the "United States, including its Territories and possessions," for purposes of liberalized naturalization benefits, the Justice Department eventually adopted the view that Filipinos who had, always been domiciled in the Philippines were eligible under the 1940 Act, as amended.[14]

During the Japanese occupation, approximately 7,000 Filipino soldiers apparently were naturalized outside the Philippines under the 1940 Act.[15] Meanwhile, as the war in the Pacific wound down, the government of the Commonwealth of the Philippines voiced concern that large numbers of young Filipinos who had never lived abroad would become United States citizens and emigrate.[16] Under the terms of the 1940 Act, naturalization petitions had to be filed either with a court having naturalization jurisdiction or, in the case of aliens outside the United states, with a specially designated

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[6] H.R. Rept. No. 1765, 77th cong., 2d Sess. 10 (1942).
[7] Act of March 27, 1942, c. 199, § 1001, 56 Stat. 182.
[8] Act of December 22, 1944, c. 662, § 1, 58 Stat. 886.
[9] Nationality Act of 1940, as amended, § 701; 8 U.S.C. § 1001 (1946).
[10] Immigration and Nationality Act of 1952, as amended, 66 Stat. 163, 8 U.S.C. §§ 1101 *et seq.*
[11] INA, § 310(e), 8 U.S.C. § 1421(e), as added by Act of September 26, 1961, § 17, 75 Stat. 656.
[12] INA, § 329, 8 U.S.C. § 1440.
[13] *See* Memorandum of September 25, 1945, from Ugo Carusi, Commissioner of the Immigration and Naturalization Service, to Tom C. Clark, United States Attorney General, regarding naturalization of nonresident Filipinos serving in the armed forces [*Carusi Memorandum*].
[14] *Id.*
[15] *See INS* v. *Pangilinan*, — U.S. —, 108 S.Ct. 2210, 2213 (1988).
[16] *Id.*

officer stationed abroad.[17] George Ennis, Vice Consul at Manila, was appointed such a naturalization officer shortly after liberation of the Philippines in August 1945.[18] However, in order to meet the growing concern of the Philippine government, Mr. Ennis's naturalization authority was revoked as of October 26, 1945.[19] No naturalization officer was appointed thereafter until August 1946, a gap of over nine moths.[20] The statutory deadline for filing special naturalization petitions was December 31, 1946.[21]

It therefore appears that Filipino war veterans were unable to file for naturalization benefits in the Philippines for over half the period between the end of the Japanese occupation and the filing deadline under the 1940 Act. It also appears that this inaccessibility resulted from an administrative decision made despite a Justice Department finding that Filipinos in the Philippines were eligible for special naturalization benefits. Perhaps not surprisingly then, the nine-month hiatus in the service of a naturalization officer in the Philippines spawned a series of court challenges by Filipino veterans, litigation that remained before the courts more than four decades after the filing deadline under the 1940 Act had expired.

Within the last sixteen years, the United States Supreme Court has overturned three separate decisions of the United States Court of Appeals for the Ninth Circuit ordering naturalization benefits for at least some Filipino veterans despite passage of the statutory filing deadline. The legal principles at issue in this litigation have varied from case to case. In the first case to be overturned, *I.N.S.* v. *Hibi*, the Ninth Circuit held that the government was precluded from enforcing the 1946 filing deadline on the basis of equitable estoppel.[22] The court found that the government's failure to inform the plaintiff veteran of his right to benefits prior to the deadline, along with the revocation of Vice Consul Ennis's naturalization authority, violated the legal duty to make benefits available under the 1940 Act and therefore the government was estopped from denying benefits later by relying on the statutory filing deadline.[23] A six-Justice majority of the Supreme Court disagreed, in part stating:

> It is well settled that the Government is not in a position identical to that of a private litigant with respect to its enforcement of laws enacted by Congress.
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> [INS], in enforcing the cutoff date established by Congress, as well as in recognizing claims for the benefits conferred by the Act, is enforcing the public policy established by Congress.
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> We do not think that the failure to fully publicize the rights which Congress accorded under the Act of 1940, or the failure to have stationed in the Philippine Islands during all of the time those rights were available an au-

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[17] Nationality Act of 1940, as amended, § 702, 8 U.S.C. § 1002 (1946).
[18] *Pangilinan*, 108 S.Ct. at 2213.
[19] *Id.* at 2214.
[20] *Id.*
[21] Nationality Act of 1940, as amended, § 701, 8 U.S.C. § 1001 (1946).
[22] *I.N.S.* v. *Hibi*, 475 F.2d 7 (9th Cir. 1973).
[23] *Id.* at 10–11.

> thorized naturalization representative, can give rise to an estoppel against the Government.[24]

In the second Ninth Circuit case, *Mendoza* v. *United States*,[25] the court found that the Government could not enforce the 1946 filing deadline because of its failure to appeal *In the Matter of Naturalization of 68 Filipino War Veterans*,[26] a district court decision handed down after the Supreme Court's decision in *Hibi*. The district court in *68 Filipinos* had classified the Filipino plaintiffs before it into three categories and had granted relief accordingly. Otherwise eligible veterans who had filed applications or taken other measures prior to the 1946 deadline had been found eligible for naturalization under the 1940 Act on estoppel and constructive compliance grounds. Otherwise eligible veterans who could not show that they had taken action during the statutory filing period had been found eligible for naturalization on constitutional grounds. Veterans who were unable to show that they had met service or other basic eligibility requirements had been given 90 days to prove statutory eligibility.[27] After the government withdrew its appeal in the *68 Filipinos* litigation, other plaintiffs sought relief in the courts, including the plaintiffs in *Mendoza*. The district court in *Mendoza* held that the government could no longer contest eligibility under the 1940 Act on the basis of collateral estoppel; that is, the court found that the government was precluded from relitigating the eligibility issue in *Mendoza* doctrine by the *Mendoza* plaintiffs against the government was both appropriate and fair.[28] The Supreme Court, however, disagreed.[29] In doing so, the Court emphasized the inappropriateness of allowing plaintiffs to use collateral estoppel to prevent the government from litigating the same issue at different times in different forums:

> It is not open to serious dispute that the government is a party to a far greater number of cases on a nationwide basis than even the most litigious private entity[.] [The government therefore] is more likely than any private party to be involved in lawsuits against different parties which nonetheless involve the same legal issues.
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> A rule allowing nonmutual collateral estoppel against the government in such cases would substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue.
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> The Solicitor General's policy for determining when to appeal an adverse decision would also require substantial revision.[30]

The *Mendoza* decision did not overturn the ruling in *68 Filipinos*, but rather forced Filipinos seeking to become naturalized under the 1940 Act to convince a court of the merits of their claims anew. On further review on the merits the Ninth Circuit once again

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[24] *I.N.S.* v. *Hibi*, 414 U.S. 5, 8, 8–9 (1973).
[25] 672 F.2d 1320 (9th Cir. 1982).
[26] 406 F.Supp. 931 (N.D.Cal. 1975).
[27] *Id.* at 936–951.
[28] *Id.* at 1325–1330. For a contrary decision on the collateral estoppel issue, see *Olegario* v. *United States*, 629 F.2d 204 (1980).
[29] *United States* v. *Mendoza*, 464 U.S. 154 (1984).
[30] *Id.* at 160.

agreed with the Filipino plaintiffs. The basis for the holding in this third Ninth Circuit case, *Pangilinan* v. *INS*,[31] was that the Attorney General had failed to perform a mandatory duty set forth by Congress when it withdrew Vice Consul Ennis's naturalization authority and that the courts had broad equitable powers in naturalization matters to remedy this type of lapse of duty.[32] The Supreme Court disagreed with this rationale, however, concluding that "[n]either by application of the doctrine of estoppel, nor by invocation of equitable powers, nor by any other means does a court have the power to confer citizenship in violation of [express cutoff dates and subsequent other limitations imposed by Congress respecting eligibility for naturalization]" [33]

ANALYSIS OF LEGISLATION

H.R. 525, as amended, permits for the naturalization of Filipino War Veternas who served in active duty status in the United States Armed Forces, includng the Philippine Army, the Philippine Scouts, and the Recognized guerilla units, at any time during September 1, 1939 and the ending December 1, 1946. The legislation will allow those individuals who fought along side our American soldiers to apply for naturalization in the United States during a two year period beginning on the date of the enactment of this Act. The war veterans, after naturalization, will not be required to meet the residency requirement of Section 340 (d) of the Immigration and Naturalization Act.

The legislation covers those Filipino soldiers who were members of the Philippine Commonwealth Army, Philippine Scouts and the recognized guerilla forces, also known as USAFFE (U.S. Armed Forces in the Far East). A program to validate claims of those Filipinos who served in WWII began in May of 1945 and ended on June 30, 1948. The records are kept at the National Personnel Records Center in St. Louis, Missouri. Approximately 260,000 individuals were granted guerilla recognition under this program. To date, the Veterans Administration estimates that there are approximately 60,000 Filipino war veterans still alive.

This legislation, in part, would continue in the same fashion as the Nationality Act of 1940 (54 Stat. 1137), which was amended by the Second War Powers Act of 1942 (56 Stat. 182), to provide for expeditious naturalization of military personnel engaged in war. The Committee notes that unlike the 1942 legislation, H.R. 525 requies all applicants to file in the United States and only the residency requirements is waived.

OVERSIGHT STATEMENT

Clause 2(l)(3)(A) or rule XI of the Rules of the House of Representatives is inapplicable since no oversight findings and recommendations have been received from the Committee on Government Operations.

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[31] 796 F.2d 1091 (9th Cir. 1986).
[32] *Id.* at 1097-1103.
[33] *I.N.S.* v. *Pangilinan*, — U.S. —, 108 S.Ct. 2210, 2216 (1988).

INFLATIONARY IMPACT STATEMENT

Pursuant to Clause 2(l)(4) of rule XI of the Rules of the House of Representatives the Committee estimates that this bill wil not have a significant inflationary effect on prices and costs in the operation of the national economy.

BUDGETARY INFORMATION

Clause 2(l)(3)(B) or rule XI of the Rules of the House of Representatives is inapplicable because the instant legislation does not provide new budget authority.

COMMITTEE RECOMMENDATION

After careful consideration of this legislation, the Committee is of the opinion that this bill should be enacted and accordingly recommends that H.R. 525 as amended, do pass.

CHANGES IN EXISTING LAW

Pursuant to clause 3 of rule XIII of the Rules of the House of Representatives, no changes are made to existing law by this bill.

ADMINISTRATION POSITION

The Administration, supports the enactment of this bill.

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